*THE HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY

+W.P. NO.26550 OF 1995

%14.03.2007

A.Linga Reddy
And others.

..Petitioners

Vs.

$ Andhra Pradesh State Handloom Weavers Society Limited (APCO), Hyderabad.
Rep by its Vice Chairman and Managing Director.

And others.

.

Respondents.

!Counsel for the Petitioners : Sri K.Ramesh Babu

^Counsel for the Respondents 1 to 4 : Sri N.Rajeshwar Rao,
Counsel for the Respndent NO.5 : None

<Gist :

>Head Note:

?Cases Referred:
1. AIR 1964 SC 962
2. (1986) 1 SCC 133
3. AIR 1967 SC 1269
4. 1969(2) SCC 262

5. AIR 1978 SC 597
6. (1981) 1 SCC 664

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.26550 of 1995

Dated: 14.3.2007

Between:

A.Linga Reddy
And others.

… Petitioners

AND

Andhra Pradesh State Handloom Weavers
Society Limited (APCO), Hyderabad.
Rep by its Vice Chairman and Managing Director.

And others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.26550 of 1995

ORDER:

The petitioners who are erstwhile employees of A.P. Textiles Processing Cooperative Society Limited (APROS) and have later become employees of A.P. State Handloom Weavers Society Limited (APCO) filed this writ petition seeking implementation of the revised pay scales as approved by respondent No.1 in proceedings R.C.No.APROS/504/94 dated 10.1.1995, based on the 1990 formula with all consequential benefits including the arrears and variable Dearness Allowance from November, 1993 till 1.1.1995 in terms of the agreement dated 9.7.1990.

The facts, to the extent they are relevant for this case, are stated below:

APROS was established in the year 1981 for processing handloom fabrics and yarn. The petitioners were appointed as workmen during the years 1978 to 1981 when the factory was under construction. They were sponsored by Ranga Reddy District Employment Exchange and having been selected by the Managing Director of APROS. The petitioners were appointed as helpers, machinemen, fitters and cut-lookers etc.

Consequent on the decision taken by the government of Andhra Pradesh to merge APROS with APCO, ordinance No.14 dated 22.7.1993 was issued where under APROS was merged with APCO and the said ordinance later became an Act, i.e., Act 14 of 1993. Consequent on the merger, the petitioners were permitted to work in APCO processing unit since 1993 and were paid salaries, increments and Dearness Allowances as per cost index and their pay scales were being enhanced along with variable dearness allowance etc., from time to time as per the agreements and resolutions. As the units of erstwhile APROS were found unviable leading to loss of Rs.861.41 lakhs as on 31.3.1994, the issue was discussed at the meeting held by the Chief Secretary, Government of Andhra Pradesh on 1.6.1994 wherein the Managing Director, APCO was advised to take suitable decision either to sell, lease out or close the unit without causing loss to APCO or reducing the loss of APCO

and to take a decision on the services of the employees as per the rules. At the meeting held on 26.7.1994 by the Secretary to Government (IFR & HL) with the APCO officials, absorption of former APROS staff was considered and accordingly in the 16th meeting of managing committee of APCO held on 12.8.1994, APCO resolved to transfer the entire remaining staff and workers except security staff working in the APROS unit to the APCO in the existing vacant posts. According to the said resolution 130 workers on the rolls of APROS were found eligible for appointment as packers/attenders and the managing committee decided to absorb these persons as packers/attenders in the existing vacancies in the scale of Rs.740-15-950-20-1150. The managing committee accordingly authorized the Vice Chairman and Managing Director to issue formal proceedings in this regard. In pursuance of the same, the Vice Chairman and Managing Director issued proceedings in Rc.No.APROS/504/94 dated 10.1.1995 inter alia absorbing 127 persons including the petitioners as packers/attenders in the scale of Rs.740-15-950-20-1150. In addition to the pay scale, they were made eligible to draw D.A., H.R.A and other allowances as admissible to APCO employees as are relevant to that category subject to certain conditions. Condition No.3, which is relevant for the purpose of this case, is extracted below:

> " 3. Their pay fixation shall be made by adopting the following formula as per 1990 existing scales in APCO, Old Basic pay + DA + VDA = Basic pay in the

new scale of APCO.

If the basic pay arrived as above is not fixed exactly in the slab his basic pay should be fixed in the slab below the basic pay arrived and the balance amount over and above the slab shall be shown as P.P. They are not eligible for any monetary benefits, whatsoever in the fixation of pay in the corresponding scale of post into which they are now being absorbed. They shall draw revised basic pay as arrived at condition 3 above along with PP if any and the ruling DA in APCO as on the date of joining."

Clause-VI of the proceedings reads as under:

" The decision of the Vice Chairman and Managing Director, APCO is final in case of any dispute or anomaly in fixation of pay and seniority."

In the affidavit filed in support of the writ petition, it is alleged that in pursuance of the proceedings dated 10.1.1995 all the petitioners joined in their respective places as packers and attenders and some others who were sent on deputations are continuing in their respective postings and places. It is further alleged that in respect of the petitioners working in Tirupathi and Kadapa divisions they were paid the revised pay scales of 1990 as per the proceedings dated 10.1.1995. In para-9 of the affidavit they made certain serious allegations against respondents 3 and 4 and it is apposite to extract the said paragraph herein below:

" It is respectfully submitted that Sri Md.Yousufuddin the 3rd respondent herein and Sri Venkata Raju the 4th respondent herein are hell bent upon causing wrongful loss to the petitioner at every stage, tried to mislead the 1st respondent by feeding

false information and guiding always on the wrong track. The respondents 2 to 4 always acted detrimental to the interest of the petitioners and they never treated the petitioners as human beings. The 4th respondent sat on the files concerned of the petitioners for payment of arrears, revision of pay scales since 1993 till January 1995. The petitioners made number of representations to the respondents 2 to 4 asking to pay variable D.As., from 1993 to till date and to implement the revised pay scales given in proceedings of the 1st respondent dated 10.1.1995. The respondents are supposed to protect the interests of the petitioners as per Sec.7 of the Act 14 of 1983. The respondents clandestinely behind the back of the petitioners gave oral or telephonic instructions to the concerned offices not to pay the revised pay scales as per the said proceedings dated 10.1.1995. As averred earlier, in some of the Divisions they implemented the orders dated 10.1.1995 and paid revised pay scales to the petitioners. The 1st petitioner is also paid the revised pay scales as per the orders dated 10.1.1995 of the 1st respondent. The respondents also mentioned very clearly that the revised pay scales will be effected from 10.1.1995 in the L.P.Cs given to the petitioners after their transfer orders. Due to the arbitrary intervention of the respondents 2 to 4 and without the consent and orders of the 1st respondent the respondents 2 to 4 played with the future and lives of the petitioners without any jurisdiction and power to satisfy their sadistic pleasure. The said respondents are trying to influence the 1st respondent to violate the provisions of Act 14 of 1983 and also the proceedings of the 1st respondent dated 10.1.1995."

The main grievance of the petitioners is that they are denied the pay scales as provided in the proceedings dated 10.1.1995 and variable Dearness Allowance from November 1993 to 1.1.1995.

Sri A.K.Tigdi, who was the Vice Chairman and Managing Director of the first respondent filed a counter affidavit, sworn to on 5.12.1995. In para-2 of the counter affidavit it is stated that the relief that is sought for in this writ petition is given by him in his proceedings dated 5.12.1995 and that therefore, the writ petition is liable to be dismissed on this ground alone. In para-3 it is stated that by the said proceedings dated 5.12.1995, the petitioners were given the revised pay scales of Rs.740-15-950-20-1150 as per the proceedings dated 10.1.1995 and that consequently they are eligible to draw the said scale. It is also stated therein that he has also directed payment of variable D.A. from November 1993 to 1.1.1995. It is stated that the statement of pay fixation of workers is annexed to the proceedings dated 5.12.1995.

The petitioners filed a reply affidavit wherein they have disputed the claim that the revised pay scales were being paid to 38 employees of APROS who were treated as being on deputation with APCO. They reiterated that they are not being paid D.A. of Rs.188.75 since November 1993 till 1.1.1995. In para-3 of the reply affidavit it is stated that respondents are trying to mislead this Court by saying that the relief claimed in this writ petition is given by them, inasmuch as they have not adhered to the proceedings dated 10.1.1995 and are not revising the pay scales of Rs.740-1150 as per the 1990 formula as mentioned in the proceedings dated 10.1.1995. It is further stated that having

made the petitioners believe that they will be given the pay scale as per the 1990 formula and act upon that belief by joining at different places in all corners of the state failed to revise the pay scales since 10.1.1995 as promised by them; that in some regions like Tirupathi and Kadapa pay fixation by the respective unit officers was done as per the 1990 formula. In para-4 of the reply affidavit it is stated that the respondents acted to the detriment of the petitioners' interest by amending condition No.3 of the proceedings dated 10.1.1995 behind their back and without giving any notice or opportunity to them. It is also mentioned that the petitioners came to know about the said amendment after the material papers were served on their counsel on 171.11996; that the said amendment made after 11 months without any notice and opportunity to the petitioners is violative of Articles 14,19 and 21 of the Constitution of India and also to principles of natural justice and estoppel. It is averred in para-5 that the petitioners are loosing more than Rs1,000/- per month due to arbitrary and discriminatory attitude of the respondents. They reiterated in para-7 that as per the proceedings dated 10.1.1995 the pay fixation should be made by taking 1990 formula existing in APCO and not according to the amended condition No.3. In para-9 the petitioners brought out the difference in the pay scale between the proceedings dated 5.12.1995 as originally issued and the amendment made to condition No.3 and the said proceedings with an illustration showing that there is

huge disparity in the pay scales if they are paid according to the amended condition No.3 of the proceedings dated 5.12.1995. In para-10, the petitioners sought for quashing of the proceedings dated 5.12.1995 and to direct the respondents to implement the proceedings dated 10.1.1995.

When the writ petition came up on 14.11.2006 and after arguing for some time the learned counsel for the petitioner sought for adjournment of the writ petition on the ground that the proceedings dated 5.12.1995 are not formally challenged by seeking amendment of the writ petition and the writ petition was accordingly adjourned accepting his request. The petitioner later filed W.P.M.P.No.30902 of 2006 seeking permission to amend the main prayer in the writ petition by adding the relief of setting aside the proceedings dated 5.12.1995 issued by the first respondent to the existing relief claimed in the writ petition. In para-4 of the affidavit filed in support of the said W.P.M.P., it is averred that the annexure given to the proceedings dated 5.12.1995 containing the details of pay fixation is contrary to the 1990 formula and misleading; that while the respondents are paying revised pay scales to all the APCO staff, erstwhile APROS employees are denied this benefit which is patently illegal and constitutes a hostile discrimination.

The General Manager, APCO filed a counter affidavit in the application filed by the petitioners seeking amendment. It is mentioned therein that after the revised

pay scales were announced in the proceedings dated 10.1.1995, several representations were received from the employees of APCO on the pay fixation formula in which the APROS employees are getting additional benefit on merger of VDA while fixing the basic in the existing scale of APCO and as the employees of APCO are not entitled to VDA and if VDA is merged the basic pay of the juniors, i.e., APROS employees would be more than the basic pay of the seniors, i.e., APCO employees, leading to anomalies and legal complications. It is further submitted that in view of the said contingency the management has reviewed the procedure of pay fixation to APROS employees ordered earlier and decided to revise the formula by making amendment to condition No.3 which was necessary to avoid anomalies among the same category of employees; that the same was communicated to all the pay disbursing officers on 10.1.1995. The General Manager referred to condition No.6 of proceedings dated 10.1.1995 to drive home the point that the Vice Chairman and Managing Director of APCO is vested with the decision in case of any dispute or anomaly in case of fixation of pay and seniority. It is further pleaded that since the amendment petition questioning the proceedings dated 5.12.1995 is filed after a decade the same is liable to be dismissed on the ground of laches.

A reply affidavit was filed by the petitioners wherein it is mentioned that the respondent till the date of filing of the reply had not circulated the amendments to the petitioners

or submitted the same to the Court and the allegation of laches was denied on that ground.

Thereafter the petitioner No.18 filed W.P.M.P.No.2042 of 2007 seeking further amendment of the writ petition in order to question the amendment dated 10.1.1995 made to condition No.3 of the proceedings dated 10.1.1995. In para-7 of the affidavit filed in support of the W.P.M.P., it is stated that the learned counsel representing respondents 1 to 4 submitted a paper to this court on 19.1.2007 saying that the same was the amendment dated 10.1.1995 to the original proceedings in Rc.No.APROS/504/94 dated 10.1.1995. It is therefore stated that this application for amendment was required to question the purported amendment dated 10.1.1995.

The respondents thereafter filed an additional counter affidavit. In para-3 of the additional counter affidavit it is stated that after the merger of APROS with APCO by Act 14 of 1983, the employees absorbed in the first respondent society were given the pay scales on par with the existing employees in the proceedings dated 10.1.1995 by adopting the formula as per 1990 existing scales in APCO, i.e., old Basic Pay + DA + VDA = Basic pay in the new scales of APCO; that but immediately thereafter on the same day i.e., on 10.1.1995 the Managing Director of the first respondent society exercising the power conferred on him under bye-laws has issued amendment to the formula as old Basic pay + DA + VDA = revised new pay + PP if any + ruling DA in

APCO as on the date of joining. It is also stated that the proceedings dated 10.1.1995 and the amendment issued on 10.1.1995 were communicated to all the Divisional Officers of the society and that the petitioners got the benefit of revised pay as stated in the counter affidavit. In para-4 of the additional counter affidavit it is also pointed out that the application is filed after a lapse of ten years. It is averred that respondent No.1 has got power to maintain parity in the pay scales and to amend the circulars issued earlier in the interest of the organization and that therefore, it is not necessary to take approval of the Board and the Government for amending the revised pay scales as it did not relate to the policy matter and the Managing Director is vested with the administrative powers.

Separate orders on the said two W.P.M.Ps are passed by the Court today. For the reasons recorded this Court dismissed W.P.M.P. No.30902 of 2006 and allowed W.P.M.P.No.202 of 2007.

Heard Sri K.Ramesh Babu, learned counsel for the petitioner and Sri N.Rajeshwar Rao, learned counsel representing the respondents 1 to 4. No one appeared for respondent No.5.

Sri K.Ramesh Babu, learned counsel for the petitioner submitted that having merged APROS with APCO, the management considered the long standing demand of the erstwhile APROS workmen and had taken a conscious decision to give them a specific scale based on a prescribed

formula as per 1990 scales existing in APCO; that the Vice Chairman and Managing Director has absolutely no jurisdiction to take away the benefit conferred on the petitioners or tinker with the decision taken by the management without prior approval of the managing committee as communicated in the order dated 10.1.1995 by the Vice Chairman and Managing Director.

He further submitted that the so called amendment brought out to the original proceedings dated 10.1.1995 had not seen the light of the day till it was placed before this Court after the commencement of the hearing in the writ petition and the petitioners were neither given any notice and opportunity before amending condition No.3 of the original proceedings dated 10.1.1995 nor they were even communicated with the said amendment later. The learned counsel also pressed into service the allegations specifically made against respondents 3 and 4, who, according to him are mainly responsible for prevailing on the Vice Chairman and Managing Director to act to the detriment of the petitioners by denying the pay scales which the petitioners are legitimately entitled to receive.

Per contra, Sri N.Rajeshwar Rao, learned counsel representing respondents 1 to 4 submitted that though certain pay scales were announced in the proceedings of the Vice Chairman and Managing Director dated 10.1.1995, in view of several representations received by him, he issued an amendment to the original proceedings by

amending condition No.3. He further submitted that in view of clause-VI of the original proceedings dated 10.1.1995, the Vice Chairman and Managing Director has power to decide any dispute or anomaly in fixation of pay and seniority and that therefore, there was no need for him to seek the prior approval of the Managing Committee. He further submitted that since payment of the pay scales as originally contemplated to the petitioners results in payment of higher salary to them than the salaries which originally APCO employees had been drawing, the Vice Chairman and Managing Director had to necessarily amend condition No.3 of the proceedings dated 10.1.1995.

At the hearing the respondents were directed to produce the original record. They failed to produce the record on the ground that it was misplaced. On 1.3.2007 while adjourning the writ petition to 2.3.2007 to enable the respondents to trace out and produce the record, this Court directed that if the respondents fail to produce the record, the Managing Director of the first respondent shall be present in the Court. On 2.3.2007 the relevant record has been produced apart from the Managing Director presenting himself in person in the Court. From the proceedings dated 10.1.1995 it is evident that the Managing Committee of APCO in its 16th meeting held on 12.8.1994 resolved to transfer the entire staff and workers working in APROS unit to APCO in the existing vacant posts and it was also decided that they are paid the pay scale of Rs.740-15-950-

20-1150 with the pay fixation formula indicated in condition No.3 of the conditions mentioned in the proceedings dated 10.1.1995. The pay fixation is thus done consequent to the decision taken by the Managing Committee of the first respondent and the Vice Chairman and Managing Director has merely issued a formal proceedings to carryout the decision taken by the managing committee. If any amendment is required to be made, it is the bounden duty of the Vice Chairman and Managing Director to place the issue before the Managing Committee and take its approval for any such amendment or modification. However, the Vice Chairman and Managing Director without following this procedure unilaterally appeared to have amended condition No.3 which admittedly resulted in payment of lesser pay scale than what is provided by condition No.3 as originally incorporated in proceedings dated 10.1.1995. Admittedly this condition was not communicated to any of the petitioners. The amendment to condition No.3 of the original proceedings dated 10.1.1995 was stated to have been made on the very same day. It is significant to notice that Sri A.K.Tigdi filed his counter affidavit on 5.12.1995. Nowhere in the said counter affidavit he has referred to the amendment made to the said condition. On the other hand this counter affidavit is rather misleading, in that in para-2 he stated that relief that is sought for from this Court by the petitioners is given by him in his proceedings dated 5.12.1995 and hence, the writ petition is liable to be

dismissed. In para-3 of the said counter affidavit he has further compounded his unfair conduct by submitting that by proceedings dated 5.12.1995 the petitioners got the revised pay scale of Rs.740-15-950-20-1150 as per the proceedings dated 10.1.1995. However, the proceedings dated 5.12.1995 was enclosed to the counter affidavit and it is only a careful reading of the said proceedings that would unfold the mischief sought to be played by the deponent to the said counter affidavit. In reference No.5 of the said proceedings amendment to condition No.3 of the proceedings dated 10.1.1995 is mentioned and there is no elucidation or elaboration of the said amendment anywhere in the proceedings dated 5.12.1995. But the calculations contained in annexure-I are admittedly at variance with condition No.3 as originally incorporated in the proceedings dated 10.1.1995. From the tenor of the counter affidavit and the proceedings dated 5.12.1995 I have no doubt in my mind that the Vice Chairman and Managing Director of the first respondent made a deliberate attempt to mislead this Court by camouflaging the amendment to condition No.3 without explaining or specifically referring the same in the counter affidavit. He evidently pretended to be naïve in saying that the relief sought for by the petitioners was already granted by him in the proceedings dated 5.12.1995. It cannot be assumed that the Managing Director holding a high and responsible post is not aware of the difference in the salaries which the petitioners would be getting if the so

called amendment to condition No.3 is operated. Still he sought to mislead this Court by stating that the relief sought for in this writ petition is already given by him in his proceedings dated 5.12.1995. That this is a deliberate attempt not only to keep this Court in dark but also to undoubtedly deny the benefit conferred on the petitioners by the original proceedings dated 10.1.1995 is evident from the admitted fact that neither the purported amendment was communicated to any of the petitioners nor they were given any prior notice and opportunity before the amendment is made. From the record it is seen that the original proceedings dated 10.1.1995 was marked to all the individuals whereas the so called amendment has not been marked to anyone. Further it is rather curious to observe from the record that the purported amendment to condition No.3 has not been signed by the Vice Chairman and Managing Director of APCO. Some illegible signature above the words "for VC & MD APCO" is found on the original proceedings. There is no note file or the noting of the Vice Chairman and Managing Director available on file that has led to the issuance of amendment to condition No.3.

In the counter affidavit filed by Ms.N.Kiranmai, General Manager, APCO in W.P.M.P.No.30902 of 2006 it is stated that several representations were received from the employees of APCO on the fixation done in the proceedings dated 10.1.1995 to the effect that APROS employees are getting additional benefit of merger of VDA while fixing the

basic pay in the existing scale of APCO and that therefore, the management has reviewed the procedure of pay fixation to APROS employees ordered earlier and decided to revive the formula. However, in para-6 of the affidavit the action of the Managing Director in issuing the amendment was sought to be justified by relying on condition No.6 of the conditions contained in original proceedings dated 10.1.1995 and also on the basis of the fact that he is the appointing authority and disciplinary authority for all the cadres of APCO except for Category-I as per the service bye-laws. It is not in dispute that the issue for amendment of condition No.3 was not placed before the managing committee. It is purported to be the unilateral action of the Vice Chairman and Managing Director. It is surprising to notice from the file that even the Vice Chairman and managing Director has not made any noting anywhere in the file showing that he has in fact applied his mind and taken a conscious decision to amend condition No.3 even assuming that he had the competence to do so. On seeing the aforementioned averments in the counter affidavit in W.P.M.P.No.30902 of 2006 that several representations were received from the APCO employees, I have looked into the entire file in order to find out whether any such representations have been received. I found none. When I asked the learned counsel Sri N.Rajeshwar Rao whether any such representations were received, he stated that no written representations were received but oral representations were made. This is

wholly incredible because on the same day when the proceedings dated 10.1.1995 was issued it is not known how the APCO employees were vigilant enough to procure a copy of the proceedings, react swiftly and then make representations on the same day and the Managing Director immediately would react to those representations and pass an order which is undoubtedly detrimental to the interests of the petitioners. The Managing Director who appeared to have acted at his whims has made attempts to cover up his blatantly illegal act by filing false affidavit in to the Court holding out that he has already granted relief to the petitioners as sought for in the writ petition. From his overall conduct in this case, it is reasonable to presume that he deliberately refrained from referring to the purported amendment made to condition No.3 in his counter affidavit obviously hoping that the court would give in by this misleading counter affidavit and close the writ petition. To his misfortune this has not happened. Now it is evident from the file that neither was there any representation made by any of the so called aggrieved workers of APCO nor even the Managing Director had passed an order in writing to enable any of his subordinates to sign the proceedings dated 10.1.1995. It is also noticed that the purported amendment does not bear any date. Evidently a slip containing purported amendment was prepared at a later date contrary to what the respondents have sought to project as if the amendment was made on the same date.

The capricious manner in which the Managing Director has conducted himself in setting at naught the pay scales which were given on the strength of the decision taken by the managing committee of the first respondent does not behove the high office he holds.

In the light of the aforementioned facts the main question for consideration is whether the so called amendment made to condition No.3 of the proceedings dated 10.1.1995 can be sustained?

Undisputedly there was lot of litigation preceding the proceedings dated 10.1.1995 as merger of APROS has taken place under Act 14 of 1983. There was long pending demand from the erstwhile APROS employees in the matter of fixation of pay scales. The Government of Andhra Pradesh intervened and discussions at the level of Chief Secretary and Principal Secretary with the management of APCO took place which finally led to the decision of the managing committee taken at its 16th meeting on 12.8.1994 for fixation of pay scale. The proceedings dated 10.1.1995 was thus the culmination of the decision of the managing committee taken on 12.8.1994. That being so the fixation of pay scale at a particular level is as much a policy decision as that of the absorption of the workmen working in APROS unit into the APCO. In the counter affidavit filed in support of W.P.M.P.No.30902 of 2006 it is pleaded that in view of the anomaly of the APROS employees getting higher pay than the APCO employees, the managing director has made

the amendment and his power is traceable to condition No.6 of the proceedings dated 10.1.1995. This condition was already extracted in foregoing paragraphs of this judgment. For the Managing Director to invoke this clause there must, in the first place, exist a dispute or anomaly in fixation of pay and seniority. As already observed no one has raised any dispute as no representations are found in the file pointing out any anomaly in the fixation of pay and seniority. Moreover a careful reading of condition No.6 suggests that the expression "in case of any dispute or anomaly in fixation of pay and seniority" is referable to a dispute or anomaly in the fixation of pay of an individual employee or an inter se seniority. The width and gamut of this clause cannot be stretched to the extent of the clause embracing a policy aspect relating to fixation of pay scales of one category of employees, namely; the erstwhile APROS employees. In the background in which the pay scales were fixed as a matter of policy by the managing committee, a blanket power given to the Vice Chairman and Managing Director to revise the pay scales wholesale which virtually amounts to reframing of the policy decision taken by the managing committee cannot be countenanced and that surely would not have been the intention of the management in framing clause-6 in proceedings dated 10.1.1995. I am therefore of the considered view that the Vice Chairman and Managing Director had no power to make any amendment to the proceedings dated 10.1.1995

without the prior approval of the managing committee of the first respondent. Admittedly neither prior approval nor any ratification was obtained from the managing committee of the first respondent. Therefore, the amendment to condition no.3 has no validity in law.

Malafides:

The court cannot overlook the allegations made by the petitioners in para-9 of the affidavit filed in support of the writ petition against respondents 3 and 4, which was already extracted in the earlier portion of the judgment. Despite the specific allegations made against respondents 3 and 4, who are made eo nomine parties, they have not come forward to file any counter affidavit denying these allegations.

In **C.S.Rowjee vs Andhra Pradesh Road Transport Corporation**[1] the Supreme Court considered a similar situation where the Chief Minister, against whom allegations of mala fides were made did not file a counter affidavit controverting the said allegations. The Supreme Court held that in the absence of affidavit and material controverting allegations, the allegations remain un-rebutted and the Court would in such a case be constrained to accept the allegations so remaining un-rebutted and unanswered on the basis of probability. This view was reiterated by the Apex Court in **Express Newspaper Private Limited vs Union of India**[2]**.** It was held therein that mala fides on the part of the government in power or its functionaries would be sufficient to invalidate the action impugned and that fraud of

power vitiates the impugned orders if they have not exercised bona fide for the purpose for which the power was conferred.

Not only that respondents 3 and 4 failed to deny the specific allegations of mala fides made against them, it is further significant to note that even Sri A.K.Tigidi, Vice Chairman and Managing Director who filed counter affidavit in the writ petition failed to deny any of these allegations. Since he owned the amendment made to condition No.3, though direct allegations of mala fides are not made against him, if the allegations against respondents 3 and 4 are proved it would definitely reflect upon him, being instrumental for and author of the amendment. Having considered the entire factual background and the manner in which condition No.3 was amended, there is nothing before me from which I can say that the allegations made in para-9 of the affidavit filed by the petitioners are not well founded and accordingly I hold that the allegations of mala fides made against respondents 3 and 4 are proved and the Vice Chairman and Managing Director yielded to the pressure brought to bear upon him by respondents 3 and 4 in resorting to the blatantly unauthorized and illegal action of amending condition No.3.

Violation of Principles of Natural Justice:

Apart from the aforementioned ground invalidating the

amendment there is yet another illegality visiting the said amendment. Clause-III of the proceedings dated 10.1.1995 communicated to all the individuals including the petitioners created a vested right in them for payment of a particular pay scale. Such a vested right cannot be taken away without affording them an opportunity. It is an admitted fact that no prior notice was given or an opportunity was afforded to the petitioners before taking away the benefit conferred on them by the proceedings dated 10.1.1995. In **State of Orissa vs. Binapani Devi**[3], the Supreme Court held that even an administrative order involving adverse civil consequences shall be preceded by notice and an opportunity of hearing.

In **A.K.Kraipak and Others vs. Union of India**[4] the Apex Court held that the dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. It was also held that till recently it was the opinion of the Courts that unless the authority was required by law under which it functions to act judicially there was no scope for application of rules of natural justice. In that case the Supreme Court applied the principle of audi alterem partem by holding that if the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative enquiries.

In **Menaka Gandhi Vs Union of India**[5] it was held

that even in the absence of a provision in the relevant statute, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.

In **Swadeshi Cotton Mills vs Union of India**[6] it was held that there are two fundamental maxims of natural justice, namely; (i) audi alterem partem, (ii) nemo judex in re sua. The audi alterem partem rule has many facets, two of them being (a) notice of the case to be made; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity.

Various subsequent judgments, a specific reference to which is not made to avoid multiplication, followed this ratio and invalidated administrative actions taken in violation of the principles of natural justice.

As the first respondent failed to follow this procedure established by law the amendment is liable to be declared as illegal and accordingly it is declared as such.

For the aforementioned reasons, the writ petition shall succeed and it is accordingly allowed with the following directions:

1. Respondent No.1 shall pay to the petitioners the pay scales as envisaged in un-amended proceedings bearing No.Rc.APROS/504/94, dated 10.1.1995 issued by the Vice Chairman and Managing Director.
2. The entire arrears of pay scales including variable Dearness Allowance calculated as per the un-

amended condition No.3 of the proceedings dated 10.1.1995 shall be calculated and paid to the petitioners within a period of four weeks from the date of receipt of a copy of this order.

3. If the respondents seek to reopen the issue and revise the pay scales, it can do so prospectively and the managing committee alone shall be entitled to take a decision on the revision of pay scales; and

4. In the event of the managing committee proposing to revise the pay scales of the petitioners, the petitioners are entitled to be given a notice and an opportunity of representing their case before a final decision in this regard is taken.

Subject to the above, the writ petition is allowed with costs.

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C.V.NAGARJUNA REDDY,J

Dt:
Mdaa.

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[1] AIR 1964 SC 962
[2] (1986) 1 SCC 133
[3] AIR 1967 SC 1269
[4] 1969(2) SCC 262
[5] AIR 1978 SC 597
[6] (1981) 1 SCC 664